1975

SUPREME COURT OF THE UNITED STATES.

No. 149.

THE UNITED STATES, AT RELATION OF AARON GOODRICH, PLAINTIFF IN ERROR,

vs.

JAMES GUTHRIE, SECRETARY OF THE TREASURY.

IN ERROR TO THE CIRCUIT COURT OF THE U. S., FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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GIDEON, print.

UNITED STATES OF AMERICA.

The President of the United States, to the judges of the circuit court of the United States, for the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, wherein the United States at the relation of Aaron Goodrich are plaintiffs, and James Guthrie, Secretary of the Treasury of the United States, is defendant, a manifest error hath happened to the great damage of the said Aaron Goodrich, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same to the term of the said Supreme Court, now in session; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court. JOHN A. SMITH, *Clerk*.

Issued this 12th December, 1853.

DISTRICT OF COLUMBIA, *sct.*

The United States of America, to the honorable James Guthrie, Secretary of the Treasury of the United States, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the term thereof, now in session, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, in the county of Washington, wherein the United States at the relation of Aaron Goodrich are plaintiffs in error, and you are defendant in error; to show cause, if any there be, why judgment rendered against the said United States at the relation of Aaron Goodrich, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable William Cranch, chief judge of the circuit court of the District of Columbia, this 12th day of December, 1853.

JAMES S. MORSELL, *Associate judge, &c.*

Which is thus endorsed: Supreme Court United States, 13th December, 1853.

Service acknowledged this day.

C. CUSHING, *Attorney General.*

Know all men by these presents, that we, A. H. Lawrence, are held and firmly bound unto the United States of America, in the full and just sum of two hundred dollars, current money of the United States, to be paid to the said United States of America, or its certain attorney, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, excutors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this thirteenth day of December, in the year 1853.

Whereas lately at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in said court, wherein the United States of America at the relation of Aaron Goodrich is plaintiff, and James Guthrie, Secretary of the Treasury of the United States, is defendant, the court ordered and adjudged that the petition of said plaintiff be rejected.

And whereas, the said plaintiff having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said James Guthrie, Secretary of the Treasury of the United States, citing and admonishing him to be and appear at the Supreme Court of the United States, held in the city of Washington, at the term thereof, now in session.

Now, the condition of the above obligation is such, that if the said Aaron Goodrich shall prosecute the said writ of error to effect, and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void, otherwise to be and remain in full force and virtue.

A. H. LAWRENCE. [SEAL.]

Approved by the court, 13th December, 1853.

By order—Test: JOHN A. SMITH, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, being the twenty-eighth day of the same month, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States the seventy-seventh.

Present, the honorable William Cranch, chief judge; James Morsell, and James Dunlap, assistant judges; Jonah D. Hoover, esq., marshal; John A. Smith, clerk.

In the records of the proceedings of the said court, among others, are the following, to wit:

THE UNITED STATES on the relation of Aaron Goodrich
vs.
JAMES GUTHRIE, Secretary of the Treasury.

Be it remembered, that the said relator, by A. H. Lawrence, esq.,

his attorney, filed in court here on the tenth day of December, anno Domini eighteen hundred and fifty-three, the following petition and exhibits, to wit:

To the honorable the judges of the circuit court of the District of Columbia, for the county of Washington.

The petition of Aaron Goodrich respectfully showeth: That by the act of the Congress of the United States, approved March 3, 1849, entitled "An act to establish the Territorial Government of Minesota," it was among other things enacted, that the judicial power of said Territory should be vested in a supreme court, district courts, probate courts, and in justice of the peace. That the supreme court should consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and that they should hold their offices during the period of four years.

That said Territory should be divided into three judicial districts, and that a district court should be held in each of said districts by one of the justices of the supreme court at such time and place as might be prescribed by law, and that said judges should, after their appointments, respectively, reside in the districts which should be assigned to them.

And it was further enacted in and by the same act, that the chief justice and associate justices of said Territory should each receive an annual salary of eighteen hundred dollars, and that the said salaries should be paid quarter-yearly, at the Treasury of the United States. That on the 19th day of March, 1849, the President of the United States, by and with the advice and consent of the Senate of the United States, appointed your petitioner chief justice of the supreme court of the United States, for the Territory aforesaid, for the period of four years from the date of said appointment, and that a commission signed and sealed in due form of law was issued to your petitioner, in which it was certified, that your petitioner had been appointed by the President, by and with the advice of the Senate, chief justice of the Territory aforesaid, for the term of four years, from the 19th day of March, 1849, a certified copy of which is herewith filed, marked exhibit A, (copied p. 10.) That your petitioner accepted the aforesaid appointment, and notified the Secretary of State of his acceptance, and on the 22d day of the same month of March he took the oath of office prescribed by law, and immediately entered upon the discharge of the duties of said office. And your petitioner further shows, that he has constantly ever since resided at the town of St. Paul, which is the seat of government of said Territory, and is in the first judicial district, to which district your petitioner was assigned, and that he has performed each and every duty appertaining to said office of chief justice of said Territory, punctually and faithfully, without interruption from the time when he entered upon the duties of said office, until the latter part of the month of November, 1851, at which time he received a communication, dated October 22d,

1851, from the honorable J. J. Crittenden, acting Secretary of State, informing your petitioner that the President of the United States had thought proper to confer the appointment of chief justice of the supreme court of the United States, for the Territory of Minesota, which your petitioner then held, upon Jerome Fuller, a certified copy of which is herewith filed, marked exhibit B. (p. 12.)

And your petitioner would further show, that thereupon he informed the President of the United States, the Secretary of State, and the Secretary of the Treasury of the United States, of the determination of your petitioner to continue in the faithful discharge of the duties devolving on him by his appointment, his oath of office, his commission, and the aforesaid act of Congress, up to the day of the expiration of the four years from the date of said appointment.

And your petitioner further shows, that he has been constantly and punctually at chambers, and in the hall of justice, ready to discharge the duties of said office, up to the nineteenth of March of the present year, at which time your petitioner's term of office expired; and your petitioner has made frequent application at the Treasury for the amount of salary due to him during the term of his office as aforesaid, but has been constantly refused, and his claim rejected to any and all that part of said salary which has accrued since the alleged removal of your petitioner from the office aforesaid, and the alleged appointment of another in his place, on the sole ground that your petitioner was no longer chief justice as aforesaid, since the 22d day of October, 1851. And your petitioner alleges, that the President of the United States had no power to remove your petitioner from said office during the said four years from the date of his commission; that consequently there was no vacancy in said office, your petitioner being alive, not having resigned, and being in the full discharge of said duties at the time of said supposed removal; and that the President of the United States had no power to constitute any other person chief justice in said Territory during the said four years.

And your petitioner further shows, that a sufficient appropriation has been made by Congress each and every year of the aforesaid four years, for the purpose of paying the salaries of the three judges of the said Territory.

And your petitioner would further show, that there is now due and unpaid to him the sum of twenty-five hundred and fifty dollars, which the Secretary of the Treasury unjustly detains. See exhibits C and D, herewith filed.

Wherefore, your petitioner respectfully prays that your honors, the premises considered, will award the United States writ of mandamus to be directed to James Guthrie, Secretary of the Treasury of the United States, commanding him to pay to your petitioner the amount of salary which has accrued since the time of your petitioner's alleged removal, to wit, the 22d October, 1851, up to the expiration of the four years for which he was appointed, to wit, the 19th day of March, 1853.

A. H. LAWRENCE,
For petitioner.

DISTRICT OF COLUMBIA,
Washington county, to wit:

I, Van Etten, of the Territory of Minesota, being duly sworn according to law in open court, deposes and says, that he is conusant of the facts stated in the aforegoing petition, and that said petition does faithfully and truly detail the facts as therein stated, and that all the matters stated in said petition are true.

Sworn to this 28th day of May, 1853.

Test: JOHN A. SMITH, *Clerk*.

Exhibit A—Commission.

Zachary Taylor, President of the United States of America, to all who shall see these presents, greeting:

Know ye, that reposing special trust and confidence in the wisdom, uprightness, and learning of Aaron Goodrich, of Tennessee, I have nominated, and by and with the advice and consent of the Senate, do appoint him chief justice of the supreme court of the United States for the Territory of Minesota, and do authorize and empower him to execute and fulfil the duties of that office according to the Constitution and laws of the said United States, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said Aaron Goodrich, for the term of four years from the day of the date hereof.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the nineteenth day of March, in the year of our Lord one thousand eight hun-
[SEAL.] dred and forty-nine, and of the independence of the United States of America the seventy-third.

Z. TAYLOR.

By the President:
J. M. CLAYTON, *Secretary of State*.

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting:

I certify, that the annexed is a true copy of the record in this department, of a commission granted to Aaron Goodrich.

In testimony whereof, I, W. L. Marcy, Secretary of State of the United States, have hereunto subscribed my name, and
[SEAL.] caused the seal of the Department of State to be affixed. Done at the city of Washington, this twenty-fifth day of May, A. D. 1853, and of the independence of the United States of America the

W. L. MARCY.

Exhibit B.

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting:

I certify, that the annexed is a true copy of the record in this department, of a letter addressed to the honorable Aaron Goodrich, by John J. Crittenden, acting Secretary.

In testimony whereof, I, W. L. Marcy, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed. Done at the city of Washington, this twenty-sixth day of May, A. D. 1853, and of the independence of the United States of America the 77th.

[SEAL.]

W. L. MARCY.

DEPARTMENT OF STATE,
Washington, October 22, 1851.

Hon. AARON GOODRICH,
St. Paul, Minesota.

SIR: The President of the United States having thought proper to confer the appointment of chief justice of the supreme court of the United States, for Minesota, which you now hold, upon Jerome Fuller, this letter is written to apprise you of the circumstance, and to inform you that your successor's commission has been this day transmitted to him by the department.

I am, very respectfully, sir, your obedient servant,

(Signed) JOHN J. CRITTENDEN,
Acting Secretary.

Exhibit C.

TREASURY DEPARTMENT,
Comptroller's Office, January 17, 1852.

Hon. H. H. SIBLEY,
House of Representatives.

SIR: Your letter of the 14th instant, has been received, in relation to and including draft of Aaron Goodrich, esq., for the amount claimed by him for his salary as chief justice of the supreme court of the Territory of Minesota, for the quarter ending December 31st, 1851.

I wrote to the honorable D. Webster, Secretary of State, for information on the subject, and have his answer stating that Mr. Goodrich was notified of his removal from that office on the 22d of October, 1851, and that Jerome Fuller was commissioned as chief justice of the Territory on that day. I have sent the papers to the First Auditor, and requested him to state an account for the salary of Judge Goodrich up to and including the day of his removal.

This will not prejudice his right to any further claim to which he may be entitled, if any, for his services, if any between the date of his removal and the receipt of notice thereof, or for any other period.

I am, very respectfully, yours,

ELISHA WHITTLESEY.

Exhibit D.

TREASURY DEPARTMENT,
Comptroller's Office, December 8, 1853.

In the matter of the claim of Aaron Goodrich, esqr., for his salary as judge of the Territory of Minesota.

This cause comes before me as Comptroller of the Treasury, on an appeal from the decision of the First Auditor.

I find the following facts exist, to wit:

Aaron Goodrich, esqr., presented the following account to the First Auditor for settlement and payment as a public account:

"United States of America,

"To Aaron Goodrich, Dr.

"To salary as judge of the Territory of Minesota, from 1st December, 1851, to 19th March, 1853, at $1,800 per year - - - - - - - - - - $2,343 00"

He was appointed chief justice of the supreme court of the Territory of Minesota, by and with the advice and consent of the Senate of the United States, and commissioned by the President such chief justice on the 19th March, 1849, for the period of four years; soon thereafter he took the oath required, and entered upon the duties of the office.

He was removed by the President of the United States, and Jerome Fuller, esqr., was appointed chief justice to fill the vacancy.

He was commissioned on 21st day of October, 1851, was qualified as required by law, and soon thereafter he entered upon the duties assigned by law.

Judge Goodrich was paid his salary as chief justice of said court to the 20th of October, 1851, inclusive, by Report No. 106636, dated the 24th of January, 1852.

The Attorney General of the United States, on the 30th of August, 1853, in the case of Grafton Baker, judge for the Territory of New Mexico, having said:

"The general rule of law is well settled, that in the case of appointments and removals by the President, where the removal is not by direct discharge or on an express vacating of the office by way of independent fact, but merely by the operation of a new commission or appointment, then the virtue of the old commission ceases only when notice of the new commission is given to the outgoing officer either by the President or by the new officer exhibiting his commission to the old one, or by other sufficient notice."

An inquiry was made to ascertain when Aaron Goodrich was legally

notified of his removal, and of the appointment of Jerome Fuller as his successor, and it was ascertained by his own statement under oath, that he was so notified on the 30th of November, 1851. The accounting officers thereupon stated another account on the 23d day of November, 1853, and by Report No. 112968, the said Goodrich was paid his salary as said chief justice, from the 21st of October to the 30th of November, 1851, inclusive. The salary of said Jerome Fuller as such chief justice, from the 21st of October, 1851, the date of his commission, was paid.

The said Aaron Goodrich having presented his account to the First Auditor for his salary from the 1st day of December, 1851, inclusive, to the 19th of March, 1853, as mentioned above, the said Auditor by Report No. 113035, dated the 6th of December instant, *deceased*, "that Aaron Goodrich is not entitled to the salary now claimed by him," and accordingly he disallowed and rejected said claim.

Mr. Goodrich appealed from that decision to this office, under a provision in the 5th section of an act, approved September 2d, 1789, entitled "An act to establish the Treasury Department," vol. 1, pages 66, 67. The facts mentioned have been duly considered.

The law organizing the Territory of Minesota, among other things, provides, "That the judicial power shall be invested in a supreme court, &c.; that the supreme court shall consist of a chief justice and two associate justices," &c.; that the chief justice and associate justices shall be nominated, and by and with the advice and consent of the Senate appointed by the President of the United States. Vol. 9, section 9 and section 11, pages 106 and 107.

When the President and Senate of the United States exercise a power which in their opinion has been conferred on them by the Constitution or by the law of the United States, the accounting officers have not the authority or right to say officially that the exercise of such power is unconstitutional and illegal, and should be by said accounting officers disregarded and held for nought. There can be only one chief justice in the supreme court in said Territory; and the President of the United States having thought proper to remove chief justice Goodrich, and having nominated, and by and with the consent and advice of the Senate, appointed Jerome Fuller chief justice in the room and stead of the said chief justice Goodrich, I am bound as an accounting officer to consider said removal and appointment as legal.

In consideration of the facts and the law my decision is, that the United States are not indebted to Aaron Goodrich as chief justice of the supreme court of the Territory of Minesota, and the decision of the First Auditor in the premises is confirmed and established.

ELISHA WHITTLESEY.

Whereupon the said petitioner, by A. H. Lawrence, esquire, his attorney, moved the court for a rule upon the Secretary of the Treasury of the United States, to show cause, if any he can, why a writ of mandamus should not issue, according to the prayer of his petition; which motion having been argued, and the court being fully advised,

Decree.

On the tenth day of December, in the year eighteen hundred and fifty-three, "Ordered, that the said motion be overruled, and that the prayer of the said petition be rejected."

By order of the court.

Test: JOHN A. SMITH, *Clerk*.

Thereupon the said Aaron Goodrich, by his attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, John A. Smith, clerk of the circuit court of the District of Columbia, for the county of Washington, hereby certify, that the aforegoing transcript is a full transcript of the record of proceedings of the judgment aforesaid, in the cause of Aaron Goodrich, on petition for a writ of mandamus to be directed to James Guthrie, Secretary of the Treasury of the United States; and all things thereunto relating, together with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed.

In testimony whereof I hereto subscribe my name, and affix
[SEAL.] the seal of the said court, on this thirteenth day of December, in the year eighteen hundred and fifty-three.

JOHN A. SMITH, *Clerk*.